

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 194 of 2005

Date of decision: 4.4.2007

Baggu Ram ..Petitioner

Versus

State of H.P. and others Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge

Whether approved for reporting? No.

For the Petitioner: Mr.Neeraj Kumar Sharma,Advocate.

For Respondents 1 to 3 : Mr.M.S.Chandel, Advocate General,
with Mr.R.M.Bisht, DAG

For Respondent No. 5 Ms.Archana Dutt, Advocate

Per Deepak Gupta, J (Oral)

This writ petition is directed against the order of the learned H.P. State Administrative Tribunal, dated 2nd December, 2004, in OA No. 1948/2002 whereby the original application filed by the present petitioner has been dismissed.

Brief facts, necessary for the decision of the case are that the petitioner as well as respondent No.5 had applied for the post of part-time water carrier in the Govt. Primary School, Chinyari, Tehsil-Nalagarh, District-Solan. There were as many as 27 candidates who had applied for the said post. Respondent No.5 was selected and his selection

was challenged by the petitioner before the learned Tribunal. One of the grounds of challenge of the petitioner was that the petitioner had wrongly been denied the benefit of 5 marks though the land which had been donated and for which the benefit was given to the respondent No.5 was joint land owned by the family of the petitioner and respondent No.5. The other contention of the petitioner was that the family of respondent No.5 had already been given the benefit of his family having donated the land and the brother of respondent No.5 had been appointed as part time water carrier in the Govt. Primary School. The original application filed by the petitioner was rejected by the learned Tribunal mainly on the ground that the petitioner had failed to establish malafides or arbitrary action in the selection of respondent No.5.

We had called for the record of the case and the perusal of the record shows that there are over-writings on the marks awarded to a number of candidates. The over-writings are in those cases, where the marks are about 20 and above, since, all such candidates would be eligible for selection. As far as the respondent No.5 Baldev Sharma is concerned we find that initially in the viva zero marks were shown against his name and later the figure zero was cut and two marks were shown, thereafter again there is over-writing over the figure 2 which has been scored off and now the figure 3 has been entered. It is by means of this change in the marks that the respondent No.5 has been awarded 23 marks and has been selected.

From the perusal of the record, we find that the over-writings are numerous and infact one candidate Ram Paul who belongs to

scheduled caste had obtained 22 marks. There is no over-writing in the marks awarded to Ram Paul. It is obvious and clear to the naked eye itself that the marks of Baldev Sharma respondent No.5 were altered with a view to help him to get selected as part time Water-Carrier.

In view of the aforesaid discussion, we are of the considered view that the selection of respondent No.5 cannot withstand judicial scrutiny. His selection is illegal and set-aside. The order of the learned Tribunal dated 2.12.2004 is accordingly set-aside, the selection of respondent No.5 is quashed and respondents are directed to hold fresh selection for the post of part time water carrier in Govt. Primary School, Chinyari, Tehsil Nalagarh, District Solan. We further direct that this selection be made within a period of three months from today and shall be made as per the existing policy. Respondent No.5 shall continue to work for a period of three months or till fresh selection is made, whichever is earlier, whereafter his appointment shall automatically come to an end. Writ petition is disposed of. Record be returned.

(Deepak Gupta), J.

April 4, 2007
(TM)

(Surinder Singh), J.

